

PLAINTIFF'S PROPOSED INSTRUCTION NO. 2 - RE DISPUTED CONTRACT TERMS

In this case the plaintiff, GMW Fire Protection, Inc., and the defendant, Kanag'Iq Construction, Inc., disagree about the terms of a construction contract. The defendant claims that, under the contract, the plaintiff agreed to perform according to a schedule of unit prices that would apply to all delivery orders, which the parties agreed to before the work on the project started. The plaintiff admits that this promise was originally made, but states that the contract terms were modified when work on the project began.

You must decide which, if either, promise was part of the contract. A promise may be implied from conduct or words. The law does not require that the conduct or words be in any special form.

To find that the promise plaintiff claims was made was part of the contract you must decide that it is more likely true than not true that:

- (1) The defendant promised the plaintiff that it would pay according to the price schedules delivered to it by GMW; and
- (2) The defendant's promise was made in exchange for something of value given or promised by the plaintiff.

If you decide that both things are more likely true than not true, then this promise was part of the contract. Otherwise, it was not part of the contract.

To find that the promise defendant claims was made was part of the contract you must decide that it is more likely true than not true that:

- (1) The plaintiff promised the defendant that it would perform according to a schedule of unit prices agreed to before the work on the project started; and
- (2) That this promise was not modified by the parties; and

- (2) The plaintiff's promise was made in exchange for something of value given or promised by the defendant.

If you decide that each of these things are more likely true than not true, then this promise was part of the contract. Otherwise it was not part of the contract.

Alaska Pattern Jury Instruction 24.01C
(modified)